

STATE OF MICHIGAN
COURT OF APPEALS

KARI LYNN SIMMS,

Plaintiff-Appellant,

v

ROBERT SERGOTT,

Defendant-Appellee.

UNPUBLISHED

June 8, 2004

No. 244962

Oakland Circuit Court

LC No. 02-664980-DP

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Plaintiff appeals by right the trial court order setting child support in this paternity action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties' child was born October 25, 2000, and plaintiff filed this paternity action on April 24, 2002. After genetic testing proved that defendant was the father, the parties resolved all their issues except those pertaining to the arrearage. The trial court ruled that support would be retroactive to the date of the filing of the complaint.

MCL 722.712 provides in part:

(1) The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. The father is liable to pay the expenses of the mother's confinement, and is also liable to pay expenses in connection with her pregnancy, as the court in its discretion may deem proper....

MCL 722.717(2) provides in part:

In addition to providing for support of the child, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement, for the funeral expenses if the child has died, for the support of the child before the entry of the order of filiation, and for the expenses in connection with the pregnancy of the mother or of the proceedings as the court considers proper.

In *Caldwell v Chapman*, 240 Mich App 124, 130, 610 NW2d 264 (2000), the Court found that this subsection clearly stated that a court may provide for payment of support before entry of the order of filiation. In contrast to this discretionary language, the Court has found that MCL 722.712 requires that expenses of confinement must be paid by the father. *Rose v Stokely*, 258 Mich App 283; 673 NW2d 413 (2003). The Court noted that unlike confinement expenses, the Legislature granted trial courts the discretion to allocate expenses for support and education between the parents. *Id*, 316.

The trial court had the discretion to award support for the time preceding the entry of the order of filiation, but the court elected to order support only from the date of the filing of the complaint. The parties did not agree to the amount of the arrearage, so that question was properly before the court. Where defendant claimed he had no knowledge the child existed before the complaint was filed, the court did not abuse its discretion in limiting the amount of the arrearage.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter